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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,356	12/30/2003	David M. Emerling	04253 (3883.00036)	7802

35374 7590 12/01/2004

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EXAMINER

HEITBRINK, JILL LYNNE

ART UNIT PAPER NUMBER

1732

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/748,356

Applicant(s)

EMERLING, DAVID M.

Examiner

Jill L. Heitbrink

Art Unit

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-10 in the reply filed on Aug. 19, 2004 is acknowledged. The traversal is on the ground(s) that the invention of group II could only be made by the method of group I. This is not found persuasive because the product can be made by placing a preform into a mold and injecting the second material onto the preform. A product defined by the process by which it can be made is still a product claim (In reBridgeford, 357 F.2d 679, 149 USPQ 55 (CCPA 1966)) and can be restricted from the process if the examiner can demonstrate that the product as claimed can be made by another materially different process; defining the product in terms of a process by which it is made is nothing more than a permissible technique that applicant may use to define the invention.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims rejected under 35 U.S.C. 102(b) as being anticipated by .

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 5, 6, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamashita et al. Pat. No. 6,106,952 taken together with Bertschi et al. Pat. No. 5,789,033.

6. Yamashita discloses a process of manufacturing a component of a center console (col. 16, lines 56 and 57) for a vehicle. Yamashita discloses the steps (col. 16, lines 1-16) of injecting a first molten thermoplastic material into a mold cavity thereby forming a structural element, "exchanging mold cavities by rotation or transfer of molds", and injecting a second molten thermoplastic material to form at least one soft-touch area (col. 17, lines 5-12) bonded to and adjacent at least a portion of the structural element. Yamashita does not specifically define the density of the first and second thermoplastic materials. The first material (such as one of the materials listed at col. 14, line 58-col. 15, line 13) would clearly be molded for strength in the use of a center console component and thus would have a higher density than the second thermoplastic polymer composition. Bertschi (Fig. 11) teaches the actuating a core (260) within a mold cavity so as to partition at least one area of the mold cavity to prevent a first molten thermoplastic material from completely filling the mold cavity and the

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retracting of the core to provide at least one secondary void within the mold cavity for the injection of a second molten thermoplastic material. It would have been obvious to a person of ordinary skill in the art to use a retracting core to form the first and second cavity for the first and second material in Yamashita since this will provide the desired shape of the cavities. Both Yamashita and Bertschi teach the permitting a predetermined lapse of time prior to permitting the structural element to partially cure prior to retracting the retractable core since the material is cured so as to at least retain its shape when the cavity shape is changed.

7. Claims 3, 4, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamashita et al. Pat. No. 6,106,952 taken together with Bertschi et al. Pat. No. 5,789,033 as applied to claims 1, 2, 6 and 7 above, and further in view of Susko et al. Pat. No. 5,996,866.

8. Susko teaches a center console with a lid and a housing with sidewalls. It would have been obvious to a person of ordinary skill in the art to mold a console with a lid and a housing with sidewalls using the process of forming a center console of Yamashita since the shape of cavity and the shape of the article are directly related.

9. Claims 6, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamashita et al. Pat. No. 6,106,952 taken together with Sorensen et al. Pat. No. 5,049,343.

10. Yamashita discloses a process of manufacturing a component of a center console (col. 16, lines 56 and 57) for a vehicle. Yamashita discloses the

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steps (col. 16, lines 1-16) of injecting a first molten thermoplastic material into a mold cavity thereby forming a structural element, "exchanging mold cavities by rotation or transfer of molds", and injecting a second molten thermoplastic material to form at least one soft-touch area (col. 17, lines 5-12) bonded to and adjacent at least a portion of the structural element. Yamashita does not specifically define the density of the first and second thermoplastic materials. The first material (such as one of the materials listed at col. 14, line 58-col. 15, line 13) would clearly be molded for strength in the use of a center console component and thus would have a higher density than the second thermoplastic polymer composition. Sorensen teaches a mold having first and second die halves (58, 62) and a core moveably supported relative to the die halves and disposed there between to define a first and second mold cavity. It would have been obvious to a person of ordinary skill in the art to use a central core between to mold halves to form the first and second cavity for the first and second material in Yamashita since this will provide the desired shape of the cavities. Both Yamashita and Sorensen teach the permitting a predetermined lapse of time prior to permitting the structural element to partially cure prior to retracting the retractable core since the material is cured so as to at least retain its shape when the cavity shape is changed.

11. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamashita et al. Pat. No. 6,106,952 taken together with Sorensen et al. Pat. No. 5,049,343 as applied to claims 6 and 7 above, and further in view of Susko et al. Pat. No. 5,996,866.

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12. Susko teaches a center console with a lid and a housing with sidewalls. It would have been obvious to a person of ordinary skill in the art to mold a console with a lid and a housing with sidewalls using the process of forming a center console of Yamashita since the shape of cavity and the shape of the article are directly related.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill L. Heitbrink whose telephone number is (571) 272-1199. The examiner can normally be reached on Monday-Friday 9 am -2 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jill L. Heitbrink  
Primary Examiner